

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Lake City, Chattanooga, Harrogate and))

Halls Crossroads, Tennessee))

MB Docket No. 03-120

RM-10591

RM-10839

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To: Office of the Secretary

Attn: Assistant Chief, Audio Division

Media Bureau

SEP 30 2004

Federal Communications Commission
 Office of Secretary

OPPOSITION TO "MOTION TO STRIKE"

JBD Incorporated ("JBD"), by its counsel, hereby opposes the *Motion to Strike* filed by Ronald C. Meredith ("Meredith") on September 20, 2004. Meredith's *Motion to Strike* fails to raise any valid grounds for striking JBD's *Supplement* and therefore should be dismissed. In support hereof, JBD states as follows:

1. On August 19, 2004, JBD filed a *Supplement* and accompanying *Motion to Accept Supplement* in order to inform the Media Bureau of a recent case decided by the Commission that relates to the line of sight issue raised by Meredith in his *Reply Comments*. That case is *Banks, Redmond, Sunriver, Corvallis and The Dalles, Oregon, Memorandum and Opinion*, 19 FCC Rcd 10068 (2004) ("*The Banks*"). JBD is certainly entitled to bring to the Media Bureau's attention a case that deals directly with an issue raised by Meredith. In his *Motion to Strike*, Meredith claims that "no need exists to alert the Commission to one of its own cases." *Motion to Strike* at p. 2. However, the Bureau has the discretion to review the *Supplement* and make a determination of its relevance. Just as parties to an application must amend to report subsequent events of decisional significance (§1.65), parties filing rule making proposals should be able to supplement their

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pleadings by alerting the Commission staff to the significance of recent relevant cases. The Motion to Strike which asks the Bureau to dismiss the supplement without any consideration is not appropriate in this instance.


2. Meredith also claims that JBD's *Supplement* "is ... nothing less than a thinly veiled effort to unfairly bolster JBD's contention that Halls Crossroads is entitled to a first local service preference." *Motion to Strike* at p. 2. However, JBD's *Supplement* does not provide the Commission with any new or additional information on the community of Halls Crossroads, but rather reiterates the evidence that JBD presented in its *Counterproposal* demonstrating that Halls Crossroads is an independent community deserving of a first local service.

3. Finally, Meredith also takes issue with the timing of JBD's *Supplement*, arguing that "to the extent it may be necessary to bring this decision to the Staff's attention, JBD fails to explain the long delay between its release and the filing of it Supplement." *Motion to Strike* at p. 1. There is no deadline for filing a *Supplement* for the purpose of reporting a recent case. The fact remains that the decision reached by the Commission in *The Banks* is relevant to this proceeding and should be brought to the Media Bureau's attention. Further, if there were some reason requiring the Supplement to have been filed earlier, that time frame would also apply to Meredith who waited over a month to file his *Motion to Strike*.

WHEREFORE, JBD respectfully requests that the Commission deny the *Motion to Strike*
filed by Ronald C. Meredith.

Respectfully submitted,

JBD INCORPORATED

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September 30, 2004

CERTIFICATE OF SERVICE

I, Lisa M. Holland, a secretary in the law firm of Vinson & Elkins, do hereby certify that on this 30th day of September, 2004, I caused copies of the foregoing "**Opposition**" to be mailed, first class postage prepaid, or hand delivered, addressed to the following persons:

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